

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1, 2, 4, 6, 9-12, 14-20, 26-33, 35-43, 57, 58, 60-63, 65, 68-70, and 72-77 are pending, with Claims 1, 2, 4, 6, 9-12, 14-20, 27-33, and 35-42 withdrawn from consideration.

**Amendment to the Claims**

Claims 26, 43, 57, 58, 60-63, 65, 68-70, and 72-77 have been examined with no claims being allowed. Applicants have amended Claim 43 to clarify that there is just one continuous length of the drum-formed upper layer, in contrast with the discontinuous lower layer. Support for this amendment is provided, for example, at page 13, lines 11-15, and at page 27, lines 16-20. Applicants have further amended Claim 43 to correct an antecedent basis error.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

**Claim Rejections - 35 U.S.C. §103****A. Everett et al.**

The rejection of Claims 26, 57-58, 60-63, and 68 under 35 U.S.C. §103(a) as being unpatentable over Everett et al. (PCT Publication No. WO 99/17695, hereinafter "Everett") is respectfully traversed.

Everett discloses a multi-layer absorbent core. There is no suggestion or motivation to modify the absorbent core in Everett to include a bottom surface area of an upper layer that is greater than a top surface area of a lower layer, as recited in Applicants' independent Claim 26.

As explained by Applicants at page 13, lines 11-15, of the subject application, the lower layer can be smaller than the upper layer and may be discontinuous. That is, the lower layer can be cut into a smaller, specifically shaped

piece or cut into several pieces and placed in areas most in need of high absorption capacity, *thereby minimizing bulk thickness in areas in which high absorption capacity is not needed.*

Applicants identified the need for absorbent composites that have a high intake ability and reduced bulk in the Background section on pages 2-5, particularly at page 3, lines 7-18.

Contrary to the Examiner's assertion, it would not have been an obvious matter of design choice to provide the upper and lower layers of Everett with Applicants' claimed dimensions because Everett specifically *teaches away* from Applicants' claimed dimensions. More particularly, Everett discloses that the upper layer is either the same size or *smaller* than the lower layer (Page 7, lines 31-33; Figs. 1B, 2A, 3A, 4A, and 7-9). Although Everett also strives to achieve a comfortable fit, the absorbent core in Everett is designed to achieve a comfortable fit in a manner that is inconsistent with Applicants' claimed invention. Thus, Everett fails to disclose or suggest all of Applicants' claim limitations. Consequently, there is no reasonable expectation of successfully achieving Applicants' claimed absorbent material based on the teachings of Everett.

For at least the reasons presented above, Applicants respectfully submit that the teachings of Everett fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**B. Everett et al. in view of Osborn, III**

The rejection of Claims 43, 65, 69-70, and 72-77 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Osborn, III (U.S. Patent No. 5,484,430) is respectfully traversed.

Osborn, III, discloses a sanitary napkin having a discontinuous absorbent core that includes a plurality of separate segments for the benefit of enabling independent movement of each segment in the Z-direction without constraints imposed by adjacent segments.

There is no suggestion or motivation to modify or combine the inventions of Everett and/or Osborn, III, to achieve an absorbent garment that

includes an absorbent assembly having a drum-formed upper layer and an air-laid lower layer, both layers having equal density, wherein the lower layer includes a plurality of separate pieces placed in desired locations adjacent to the continuous upper layer of the absorbent assembly.

Everett fails to disclose any discontinuous layers. Osborn, III, discloses a single discontinuous layer, which provides the benefit of independent, unconstrained movement by each segment in the Z-direction. However, the discontinuous lower layer in Applicants' claimed invention is provided in combination with a continuous upper layer in an absorbent assembly. Thus, the upper layer may certainly inhibit the movement of each lower layer segment in the Z-direction. Since the benefits in Osborn, III, do not apply to Applicants' claimed invention, and since there is no suggestion in Everett to provide a discontinuous layer within an absorbent structure, there is no suggestion or motivation to modify the absorbent structures of Everett and/or Osborn, III, to achieve Applicants' claimed invention.

More particularly, the entire absorbent layer in Osborn, III, is discontinuous. In contrast, none of the layers in Everett are discontinuous. A combination of these references, motivated to modify the Everett absorbent structure based on the benefits taught in Osborn, III, would result in a discontinuous absorbent structure in which both layers 48 and 50 are discontinuous. There is no suggestion or motivation in either of the references, alone or in combination, to produce an absorbent structure in which one layer is discontinuous and the other layer is not.

As to the Examiner's interpretation of the term "continuous length," the broadest *reasonable* interpretation of this term would be taken in view of the specification. In particular, at page 13, lines 11-15, Applicants state that the lower layer can be smaller than the upper layer and may be discontinuous. Applicants further explain that the discontinuous lower layer can be cut into several pieces and placed in areas most in need of high absorption capacity. This description of discontinuous pieces differentiates the multiplicity of individual pieces from a continuous length. Clearly, the language in Claim 43 ("wherein the absorbent assembly includes a single continuous length of a drum-formed upper layer...and the

lower layer comprises a plurality of separate pieces placed in desired locations adjacent to the continuous length of the upper layer”) conveys that the upper layer is continuous and the lower layer is discontinuous. The term “continuous” is not superfluous. In fact, the Supreme Court has ruled in Warner-Jenkinson Co. v. Hilton Davis Chemical Co., 520 U.S. 17 (1997) that claims must be construed so that all elements have some distinctive meaning.

Regarding Claim 65, which depends from Claim 26, Applicants further point out that neither Everett nor Osborn, III, alone or in combination, disclose or suggest the bottom surface area of an upper layer that is greater than the top surface area of a lower layer. As pointed out above, Everett discloses just the opposite, namely an upper layer that is either the same size or *smaller* than a lower layer. Osborn, III, fails to disclose or suggest any layers of the absorbent core having different surface areas. There is no suggestion or motivation in either Everett or Osborn, III, to produce an absorbent material in which the bottom surface area of an upper layer is greater than the top surface area of a lower layer.

For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Osborn, III, fail to disclose or suggest Applicants’ claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### **Conclusion**

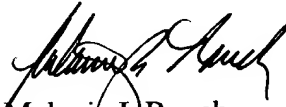
Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants’ undersigned attorney requests a telephone interview with the Examiner.

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Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Melanie I. Rauch', written in a cursive style.

Melanie I. Rauch  
Registration No. 40,924

Pauley Petersen & Erickson  
2800 West Higgins Road, Suite 365  
Hoffman Estates, Illinois 60195  
(847) 490-1400  
FAX (847) 490-1403